

PT 98-89

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**LA LECHE LEAGUE
INTERNATIONAL, INC.,
APPLICANT**

v.

**DEPARTMENT OF REVENUE
STATE OF ILLINOIS**

96-16-0915

**Real Estate Exemption
for 1996 Tax Year**

P.I.N: 07-12-300-033

Cook County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Michael P. Mosher appeared on behalf of the La Leche League International, Incorporated.

SYNOPSIS: These proceedings raise the following issues: (1) does La Leche League International, Incorporated (hereinafter the "LLLI" or the "applicant") qualify as an "institution of public charity" within the meaning of 35 **ILCS** 200/15-65;¹ and (2) should real estate identified by Cook County Parcel Index Number 07-12-300-033 (hereinafter the "subject parcel" or the "subject property") be exempt from 1996 real estate taxes under 35 **ILCS** 200/15-65,

1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1996 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 **ILCS** 200/1 *et seq.*

wherein all property owned by "institutions of public charity" is exempted from real estate taxation, provided that said property is "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit."

The controversy arises as follows:

Applicant filed a Real Estate Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on January 24, 1997. (Dept. Group. Ex. No. 1, Doc. A). The Board reviewed applicant's complaint and thereafter recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. (Dept. Gr. Ex. No. 1, Doc. B).

The Department subsequently adopted this recommendation via a determination dated September 25, 1997. Said determination found that the subject property was neither in exempt ownership nor in exempt use. (Dept. Ex. No. 2). Applicant subsequently filed a timely request as this denial (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's determination be affirmed.

FINDINGS OF FACT:

A. Preliminary Considerations

1. The Department's jurisdiction over this matter and its position therein, namely that the subject property was neither in exempt ownership nor in exempt use throughout the 1996 assessment year, is established by the admission into evidence of Dept. Ex. No. 2.

2. The subject property is located at 1400 N. Meacham, Schaumburg, IL 60173. It is improved with a 13,185 square foot building that contains one story and a basement. Dept. Group Ex. No. 1, Doc. B.
3. The building is divided into two wings (east and west) that are separated by a large area that contains a loading dock, a vestibule, restrooms and a lunchroom/kitchen. The west wing contains, *inter alia*, office space for various persons in applicant's employ, an education center, a print shop, a computer and storage space. The east wing contains, *inter alia*, additional office space, a utility room, a large conference room, a reading room, and an area from which applicant operates a toll-free telephone information service.² Applicant Ex. No. 13.³
4. LLLI acquired ownership of the subject property via a trustee's deed October 17, 1996. It had, however, held a leasehold interest in the entire subject property and conducted all of its operations therefrom, prior to that date. Applicant Ex. No. 6; Tr. p. 31.
5. Applicant continued using the subject property for its own operations after the closing date and sustained this use throughout the remainder of the 1996 assessment year. Tr. p. 39.

2. For further information on this service, *see* Finding of Fact 28, *supra* at pp. 14.

3. This exhibit contains a detailed floor plan and a self-guided tour pamphlet. Those seeking specifics about the uses associated with this floor plan are referred to the contents of Applicant Ex. No. 13.

B. Applicant's Organizational And Financial Structure

6. Applicant was originally incorporated under the "General Not For Profit Corporation Act of Illinois" on September 3, 1958. Its Articles of Incorporation have been subject to numerous amendments, the most recent of which was dated August 20, 1984. Applicant Ex. Nos. 1, 4.⁴
7. This amendment provides, *inter alia*, that applicant's specific corporate purposes are to: (1) help mothers learn to breastfeed their babies; (2) encourage good mothering through breastfeeding thereby stimulating the optimal physical and emotional growth of the child and the development of close family relationships; (3) promote a better understanding of the values of breastfeeding, parenting, childbirth and related subjects; and (4) offer discussion meetings and conduct lectures for the purposes stated above and on related subjects for such educational purposes. Applicant Ex. Nos. 4, 5.
8. Said amendment further provides, *inter alia*, that membership in LLLI shall be available to anyone regardless of race, nationality, color, creed, sex, political affiliation, or marital status upon payment of the annual membership dues established for the subsequent year by the Board of Directors at its session immediately preceding the annual session. *Id.*
9. Neither this amendment, nor anything else in applicant's organizational documents, contains any provision authorizing the Board of Directors to waive or reduce membership dues for those who cannot afford to pay. *Id.*

4. For details pertaining to the substance of applicant's original Articles of Incorporation and amendments thereto, *see*, Applicant Ex. Nos. 1-4.

10. LLLI members are entitled to: (1) attend meetings except when such meetings are limited to women and their babies; (2) borrow informational publications; (3) purchase items at a discount; (4) receive information, support, and encouragement from LLLI Leaders;⁵ (5) have access to information from the Professional Advisory Board, Medical Associates and the Center for Breastfeeding Information of LLLI; and (6) receive a journal, entitled "New Beginnings," published by LLLI. Applicant Ex. Nos. 5, 37.
11. Applicant's organizational structure is broken down into various local groups,⁶ which then form area⁷ organizations. Both the local groups and area organizations are controlled by applicant's Board of Directors, which is also responsible for governing applicant's daily business affairs and setting corporate policies. Applicant Ex. No 5.

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5. Applicant's by-laws define a "Leader" as:

... a mother who has fulfilled LLLI's requirements for leadership and has been accredited by LLLI. A Leader shall be a member of LLLI. A Leader's accreditation may be removed by LLLI for cause as set down in the Standing Rules of LLLI.

Applicant Ex. No. 5

6. Applicant's by laws define a "Group" as follows:

A Group shall consist of one or more persons meeting in accordance with the purpose of LLLI under the guidance of one or more Leaders.

Applicant Ex. No. 5.

7. Applicant's by laws define an "area" as follows:

An Area shall consist of one or more Groups within the boundaries established by the Executive Director with approval of the Board of Directors.

12. The Internal Revenue Service has recognized that LLLI is exempt from federal income tax because it qualifies as an organization described in Section 501(c)(3) of the Internal Revenue Code Applicant Ex. No. 10.
13. The Department found that applicant qualified for an exemption from the application of Use and related Illinois sales taxes, pursuant to Section 3-5(4) of the Illinois Use Tax Act (35 ILCS 105/1 *et seq*, 105/3-5(4)), via a Recommendation for Disposition in Departmental Docket Number 92-ST-0017, approved by the Director on December 12, 1994. Administrative Notice; Applicant Ex. No. 11.
14. Applicant has no capital stock or shareholders. Its fiscal year runs from April 1 through March 31 of each calendar year. Applicant Ex. Nos. 5, 38.
15. LLLI derived revenue from the following sources during the fiscal year ended March 30, 1997:⁸

Id.

8. The tables shown in this Section are based on information contained in applicant's federal return (IRS form 990) submitted as Applicant Ex. No. 38 and the audited financial statements submitted as Applicant Ex. No. 39. Both of these documents cover the same fiscal year and contain the same basic information. However, I find that the federal tax return contains a more informative breakdown of applicant's financial structure vis-à-vis the audited financial statement. Accordingly, I base the above computations and analysis on the contents of that return.

SOURCE	AMOUNT	% OF TOTAL⁹
Contributions and Similar Sources		
Direct Public Support	\$1,270,186.00	35%
Government Contributions/ Grants	\$ 44,080.00	1%
Total	\$1,314,266.00	36%
Program Service Revenue		
Royalty Income	\$132,949.00	4%
Sales of Publications And Materials	\$1,481,137.00	41%
Seminars and Workshops	\$ 130,084.00	4%
Total	\$1,744,170.00	49%
Membership Dues and Assessments	\$357,372.00	10%
Interest on Savings and Temporary Cash Investments	\$ 21,509.00	<1%
Other Sources		
Advertising Income	\$108,986.00	3%
Rental Mailing List	\$ 5,288.00	<1%
Miscellaneous	\$18,024.00	<1%
Total	\$132,298.00	4%
TOTAL REVENUES AND SUPPORT	\$3,587,615.00	

Applicant Ex. No. 38

9. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. Thus, for example, $\$1,314,266.00 / \$3,587,615.00 = .3540$ (rounded four places past the decimal) or 35%.

16. Applicant's Expenses for the same period were as follows:

EXPENSE	AMOUNT	% OF TOTAL
Program Services		
Producing and distributing written materials and products regarding breast-feeding and parenting in the USA, Canada, and 43 other countries for approximately 900 group leaders for the benefit of 60,000 mothers.	\$1,699,977.00	63%
Providing telephone and written assistance for mothers having problems in breast-feeding including seminars for mothers in lower income areas and area meetings throughout the USA, Canada and other countries	\$204,028.00	8%
Biannual conference and physician seminar which brings together members, leaders and scholars to educate them about breastfeeding and parenting techniques	\$111,898.00	4%
Project, in which LLLI is a subgrantee of Georgetown University, that strives to increase frequency and duration of breastfeeding	\$3,473.00	<1%

EXPENSE (CONT'D)	AMOUNT	% OF TOTAL
Program Service (Cont'd.)		
Project to study growth and sustainability of a support program in low income, peri-urban areas of Guatemala City	\$19,950.00	<1%
Subgrantee in project to promote optimal breastfeeding in developing countries	\$ 44,080.00	2%
Total Program Expenses	\$2,062,068.00	77%
Management/General	\$510,553.00	19%
Fundraising¹⁰	\$115,662.00	4%
TOTAL EXPENSES	\$2,688,283.00	

Id.

C. Applicant's Operations

17. Applicant's groups meet once per month. Their meetings take place in members' homes, local churches or other community centers. Tr. pp. 121-123.

18. The goal of each group meeting is to disseminate and discuss information related to breastfeeding. All participants are provided with the same information, including

10. The details of applicant's fundraising and management/general expenses are not relevant to the disposition of this case. Those interested in the specifics thereof are referred to Applicant Ex. No. 38.

- access to the group's library, regardless of their membership status or their ability to pay. Tr. p. 123.
19. Most of the funding for the libraries and other group activities comes from member's donations. These donations are over and above each member's annual dues, a percentage of which stays within the group. Tr. p. 125.
20. Leaders are not required to pay regular membership dues, which are \$30.00 per year. They must, however, pay an unspecified fee to apply for leadership and \$24.00 in annual leader dues. Applicant Ex. No. 19 Tr. p. 126.
21. Leaders receive a subscription to LLLI's journal for leaders, provided that their leader dues are current. This publication, entitled "Leaven," contains articles about promoting membership, managing the group and other information that leaders may find useful. Applicant Ex. No. 36.
22. Members receive a subscription to LLLI's bimonthly magazine, "New Beginnings." LLLI provides this publication, which contains articles of interest to nursing mothers, free to all dues-paying members. It also makes "New Beginnings" available to non-members at a cost of \$18.00 per subscription. Applicant Ex. No. 37.
23. Advertisements in "Leaven" and "New Beginnings" are limited to products used by nursing mothers, such as breast pumps, books and other publications about breastfeeding. None of these advertisements contain any information indicating that applicant will or does make promoted products available to those who cannot afford to pay full price. Nevertheless, some advertisements do contain information about reduced prices that are available through member discounts. Applicant Ex. Nos. 36, 37.

24. Applicant also produces and distributes numerous other publications including, *inter alia*: (1) a mission statement that describes its organizational goals and services; (2) sponsorship information on the annual World Walk For Breastfeeding; (3) information describing "Linkages," a worldwide project to promote breastfeeding; (4) an advertisement for its 40th Anniversary Celebration; (5) pamphlets describing its annual seminar on breastfeeding and promoting world breastfeeding week; (6) Breastfeeding Abstracts, which excerpts medical and scientific research relating to breastfeeding; and (7) various leaflets and other informational publications advertising the benefits of breastfeeding. Applicant Ex. Nos. 19 through 35.
25. Medical research has demonstrated that breastfeeding: (1) decreases the incidence and/or severity of diarrhea, lower respiratory infections, urinary tract infections and other maladies that affect infants; (2) possibly has a protective effect against sudden infant death syndrome, insulin-dependent diabetes mellitus, Crohn's disease, ulcerative colitis, lymphoma, allergic diseases and other chronic digestive diseases (3) possibly enhances cognitive development; (4) increases levels of oxytocin in nursing mothers, which results in less postpartum bleeding and more rapid uterine involution; (5) decreases menstrual blood loss over the months after delivery; (6) may cause an earlier return to prepregnant weight; and (7) results in improved bone remineralization postpartum, with reduction in hip fractures in the postmenopausal period and reduced risk of ovarian cancer and premenopausal breast cancer. Applicant Ex. No. 41.
26. Other medical and scientific research has suggested or demonstrated that: (1) economic benefits of breast-feeding include savings in Medicaid expenditures and

- savings in costs associated with infants enrolled in the Special Supplemental Nutrition Program for Women, Infants and Children;¹¹ and (2) the average cost of medical services for breastfed infants during the first year of life was \$200.00 less than that for bottle-fed infants.¹² Applicant Ex. Nos. 42, 43.
27. LLLI disseminates information about these benefits via its publications and the leaders who distribute its literature and conduct its breastfeeding information groups. Applicant also uses its offices, that are located on the subject property, to conduct peer counseling for disadvantaged populations. Tr. pp. 40, 49.
28. Applicant additionally operates an 800 number and a hot line at its offices. The 800 number received roughly 120,000 calls during 1996. Its maintenance cost for this service, through which it referred callers to leaders and other resources in their respective areas, was approximately \$50,000.00. Tr. pp. 40-41.
29. The hot line consists of a tape recording that contains leader referrals. It is available 24 hours per day but used mostly at times when LLLI cannot operate its 800 number with personnel due to lack of proper staffing. Tr. p. 46.

11. For details about these findings, *see*, Applicant Ex. No. 42.

12. For details about these findings, *see*, Applicant Ex. No. 43.

30. LLLI also conducts a mother-to-mother support group at its offices, which additionally contain a collection of research studies known as the Center for Breastfeeding Information. Applicant makes resources from this Center, which consists of approximately 13,000 publications, available to leaders, members and the general public. Tr. pp. 41-42.
31. LLLI provides these resources free of charge in most instances but assesses fees if the individual requests an unusually large amount of documentation. Applicant receives approximately 10 such requests per month and bases its fees on the cost of whatever additional staff time may be necessary to fill a particular large request. *Id.*
32. Applicant also operates a Website, from which visitors may access more than 900 pages of free information about LLLI and the services it provides to nursing mothers. The Website also contains chat rooms that allow visitors to participate in on-line discussion groups that follow the same format and talk about the same topics as applicant's regular breastfeeding information groups. Tr. p. 48.

CONCLUSIONS OF LAW:

An examination of the record established this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from property taxes for the 1996 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the subject parcel does not qualify for exemption under 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The provisions of that statute which govern disposition of the present matter are contained in the following excerpt from Section 200/15-65:

... All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity[.]

35 ILCS 200/15-65.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist.

1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

The statutory exemption of relevance to this case is the one pertaining to "institutions of public charity." Our courts have long refused to apply this exemption absent appropriate evidence that: (1) the property in question is owned by an "institution of public charity[;]" and, (2) said property is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen").

In this case, the ownership question is subject to a technical limitation set forth in the following excerpt from Section 200/9-185 of the Property Tax Code:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

35 ILCS 200/9-185.

This limitation applies herein because the trustee's deed submitted as Applicant Ex. No. 6 proves that LLLI did not acquire ownership of the subject property until October 17, 1996. Consequently, applicant is correct to concede, at p. 18 of its post-hearing brief, that its exemption claim is limited to the last 2.5 months, (or, for technical purposes, 21%), of the 1996 assessment year.

Applicant is also correct in citing the criteria that our courts use to analyze whether a given entity qualifies as an "institution of public charity." These criteria originate with the following definition of "charity[.]" first articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Korzen court supplemented this definition by identifying five "distinctive characteristics" that are common to all "institutions of public charity." The characteristics are as that such institutions:

- 1) have no capital stock or shareholders;
- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;
- 4) do not provide gain or profit in a private sense to any person connected with it; and,
- 5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen, *supra*, at 157.

These are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the applicant serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 466 (2nd Dist. 1995). Also, the word "exclusively," when used in Section 200/15-65 and other exemption statutes, means "the primary use for which property is used and not any secondary or incidental purpose." Gas Research Institute v. Department of Revenue, 145 Ill.

App.3d 430 (1987); Pontiac Lodge No. 294, A.F. & A.M. v. Department of Revenue, 243 Ill. App.3d 186 (1993).

Here, the record establishes that applicant uses the subject property for no purpose other than conducting activities that allow it to disseminate information about the health, economic, and other benefits of breastfeeding. Accordingly, LLLI's exemption claim depends on whether its methods of propagating that information are consistent with those of an "institution of public charity."

The following considerations lead me to conclude that such methods do not qualify as "charitable," mainly because the primary beneficiaries of these distributions are applicant's own dues-paying members. First, it is only the dues-paying members, rather than the public at large, who: (1) receive discounts on the products and publications they purchase from LLLI; and (2) receive a subscription to applicant's bimonthly magazine, which contains information about such products and publications.

These distribution mechanisms effectively limit access to information about applicant's products, services and publications to the limited class of people who pay membership dues. As such, I conclude that applicant's operations do not satisfy the definitional requirement of "benefit[ing] of an indefinite number of persons." Crerar v. Williams, *supra*. Accord, Oak Park Club v. Lindheimer, 369 Ill. 462 (1938); Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956); North Shore Post No. 21 of the American Legion v. Korzen, 38 Ill.2d 231, 234 (1967); Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987); Du Page Art League v. Department of Revenue, 177 Ill. App.3d 895 (2nd Dist. 1988); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991); Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

This concern also extends to the discussion groups conducted by applicant's group leaders. Those that lead such groups must be members of LLLI.¹³ They must also pay: (1) a special fee to apply for leadership; (2) another "Leader fee" upon completion of their respective applications; and (3) and leadership dues of \$24.00 per year.¹⁴

Those who pay these amounts receive LLLI leader certification training. They also receive a subscription to "Leaven" magazine and other benefits (discounts, seminars, etc.) that applicant does not make available to those who do not pay. Consequently, it seems all but factually impossible for applicant to confer such benefits on anyone except that select group of its members who can afford to clear the financial obstacles necessary to become and stay an LLLI leader.

Applicant's organizational documents also support the above conclusion, for the ones under which applicant operated during the 1996 tax year¹⁵ contain absolutely no language

13. See, testimony of applicant's executive director, Paulina Allen De Smith, at Tr. p. 51 and by-laws submitted as Applicant Ex. No. 5.

14. See, testimony of one of applicant's group leaders, Carla Dobrovits, at Tr. pp. 125-126 and pamphlet submitted as Applicant Ex. No 19.

15. Applicant attempted to introduce an amendment to its by-laws which became effective during the 1997 tax year. This amendment (Applicant Ex. No. 14), sets forth a "general policy" that "any fees or charges associated with the charitable services or products of the corporation shall be waived or reduced in accordance with each recipient's ability to pay," was not in effect during the tax year currently in question. Consequently, I excluded this document from the record on grounds that it was technically irrelevant to the present case. (Tr. p 29).

A contrary ruling would not have had a material outcome on the ultimate outcome in this case, for it is well settled that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.* More importantly, the rejected amendment says absolutely nothing about waiving membership

authorizing the Board of Directors to waive or reduce membership dues, leader fees, or any of the other above-described payments in cases of financial need. Hence, the aforementioned rules mandating that all debatable or unproven questions be resolved in favor of taxation, require me to conclude that applicant does not waive or reduce same. Based on this consideration, and the above-established fact that the primary beneficiaries of applicant's distributional activities are those who can afford to pay and keep such dues current, I further conclude that LLLI: (1) does not "dispense charity to all who need and apply for it", and (2) places significant obstacles in the way of those who seek and would avail itself of the benefits it dispenses. Korzen, *supra*. See also, Du Page Art League, *supra*; Small v. Pangle, 60 Ill. 2d 510, 518 (1975); Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 471 (2nd Dist. 1995).

I also find it significant that none of publications submitted as Applicant Ex. Nos. 19 through 37 "informs the public that [applicant's] benefits are available without charge in a proper case." Du Page Art League, *supra* at 900-901, citing Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272, 280-281 (2d Dist. 1987), (hereinafter "HPH").¹⁶ Nor do such publications mention anything about fee reductions or other accommodations that applicant may make available to those who are unable to pay full price.

dues, and thereby, fails to alter my ultimate conclusion that applicant operates primarily for the benefit of its dues-paying membership.

16. The HPH case involved a health care center that circulated advertisements to promote the center's services. Among other things, these advertisements described the available services and set forth appellant's hours. They also advised that care was available without appointment and that services were provided on a low-cost basis when compared to other facilities. However, the advertisements did not mention that free care was available to those unable to pay. The court viewed this omission as a failure of proof because it raised doubts as to whether members of the general public in fact knew free care was available at the facility. HPH at 280.

These omissions, together with the entire preceding analysis, demonstrates that LLLI fails to qualify as an "institution of public charity" within the meaning of Section 200/15-65. Said analysis further establishes that the subject property is primarily used to further applicant's distributional activities, which, in and of themselves, fail to qualify as "exclusively ..charitable or beneficent purposes". Therefore, the Department's determination which denied this property exemption from 1996 real estate taxes due to lack of exempt and lack of exempt use should be affirmed.

Applicant argues that its 800 number and other services provide appropriate evidence of exempt use. However, analysis of LLLI's federal tax return (Applicant Ex. No. 38) proves that the expenditures associated with these activities are clearly incidental to those connected with its non-exempt production and distribution functions. To wit:

EXPENSE	AMOUNT	% OF PROGRAM SERVICE EXPENSES	% OF TOTAL EXPENSES
Production & distribution ¹⁷ of written materials pertaining to breastfeeding	\$1,699,977.00	81%	63%
Telephone & written Assistance to nursing mothers	\$204,082.00	10%	8%

17. For detailed descriptions of the activities associated with these expenses, *see*, Finding of Fact 16, *infra* at pp. 8-9.

EXPENSE (CONT'D)	AMOUNT	% OF PROGRAM SERVICE EXPENSES	% OF TOTAL EXPENSES
Biannual conference & physician seminar	\$111,898.00	5%	4%
Project to increase frequency & duration of breastfeeding	\$3,473.00	<1%	<1%
Project to assist with promotion of breastfeeding in developing countries	\$8,662.00	<1%	<1%
Project to study growth and sustainability of a support program in low income areas of Guatemala City	\$19,950.00	<1%	<1%
Project to promote optimal breastfeeding in developing countries	\$ 44,080.00	2%	2%
Total Program Expenses	\$2,062,068.00	100%	77%

Our courts have repeatedly held that incidental acts of beneficence are legally insufficient to satisfy the exclusive use requirement contained in Section 200/15-65. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991). Therefore, applicant's attempt to obtain exemption by reference to its 800 number and other non-distributional activities fails.

Applicant's exemptions from federal income, Illinois Use and other non-related taxes¹⁸ do not alter any of the preceding conclusions. Such exemptions do not establish that the subject property was actually used for exempt purposes during the year in question. In re Application of Clark v. Marion Park, Inc., 80 Ill. App.3d 1010, 1012-13 (2nd Dist. 1980), citing People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

LLLI's exemption from federal income tax may prove that is an exempt organization for purposes of the relevant Sections of the Internal Revenue Code. However, these sections do not preempt section 200/15-65 or any of the other exemption provisions contained in the Property Tax Code. Nor do such sections of the Internal Revenue Code establish that applicant qualifies as an "institution of public charity" within the meaning of section 200/15-65. Thus, for all the preceding reasons, neither this exemption nor applicant's exemption from Illinois Use and related taxes, has any material effect on the ultimate outcome in this case.

Applicant's final argument is that the case of Vermillion County Museum Society v. Department of Revenue, 273 Ill. App.3d 675 (4th Dist. 1995) (hereinafter "VCMS") provides the Department with authority to "disregard" the fee waiver provisions contained in section 200/15-65(c), which exempts:

Old people's homes, facilities for persons with developmental disabilities and not for profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code¹⁹ or its successor, and

18. I use the adjective "non-related" to connote the statutory, conceptual and functional differences between the *ad valorem* real estate taxes presently under review and the federal income, State use and other related sales taxes which are not at issue herein even though applicant is exempt therefrom.

19. 26 U.S.C.A. § 501.

either: (i) *the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services*, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.²⁰

35 ILCS 200/15-65(c) (emphasis added).

Section 200/15-65(c) does not apply to this applicant because the organizational document under which LLLI operated during the tax year in question contained no fee waiver provisions. More importantly, the aforementioned rules requiring that exemption statutes be strictly construed in favor of taxation clearly prohibit me from waiving *any* of the statutory or common law requirements for exempt status.

The VCMS case is also easily distinguishable from that of LLLI. The VCMS court addressed an issue not raised in the present case, that being whether a parking lot adjoining a historical museum qualified for exemption under the statute that (with certain stated conditions not here relevant) exempted parking areas of exempt institutions.²¹ The court indicated that the museum's minimal admission charges and membership fees²² posed an "insignificant hinderance" to exemption of the museum itself. VCMS, *supra* at 679.

This applicant's membership dues are \$30.00 per year, a sum that not only exceeds the \$10.00 found "insignificant" in VCMS, but also entitles LLLI's members to discounts and other

20. 12 U.S.C.A. 1701(q).

21. The version of that statute at issue in VCMS was found in Ill. Rev. Stat. ch. 120, par. 500.16. Its current version is codified at Section 200/15-125 of the Property Tax Code, 35 ILCS 200/15-125.

22. The admission charge was \$1.00 for adults, 50¢ for children. The admission fee was \$10.00 per year. VCMS, *supra* at 679.

benefits which are not available to those who do not pay membership dues. In this sense, the present case is more akin to DuPage Art League, *supra*, than VCMS. Therefore, applicant's reliance on the latter is grossly misplaced.

The authoritative value of VCMS is also weakened by Justice McCullough's dissent, which argued that:

Because the [museum itself] does not have an approved exemption, the exemption for the parking lot must fall. I reiterate, *this case does not concern taxation of the building*, I do suggest the Society has a responsibility to pursue tax exempt status for [the museum itself], as required by the statute, if that is its desire.

VCMS at 680-681. (McCullough, J. dissenting) (emphasis added).

This concern extends to the present case, for applicant itself does not qualify as an exempt entity. As such, the subject property, which LLLI uses exclusively in furtherance of its non-exempt distributional functions, does not qualify an "approved exemption." For this and all the preceding reasons, applicant's "waiver" argument fails.

Nothing in the above analysis should be construed as impugning the expertise of applicant's expert witness, Dr. Lawrence M. Gartner. Nor should anything contained herein be interpreted as questioning the medical or scientific validity of the research papers (Applicant Ex. Nos. 41 through 43) admitted during the course of Dr Gartner's testimony. Such papers provide ample evidence of the medical, economic and other benefits associated with breastfeeding. However, it is the manner in which applicant distributes information about these benefits, rather than the benefits themselves, which cause the instant exemption application to fail. Therefore, the mere content of applicant's message cannot provide a legally sufficient basis for reversing the initial determination in this matter, which denied applicant's property exemption from 1996 real estate taxes.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 07-12-300-033 not be exempt from 1996 real estate taxes.

Date

Alan I. Marcus
Administrative Law Judge